

AFTER RECORDING RETURN TO:

Kitsap Public Health District
345 6th Street, Suite 300
Bremerton, Washington 98337

ENVIRONMENTAL (RESTRICTIVE) COVENANT

Grantor:	ST Trust (Owner) William J. Nilles Jr., Trustee 413 State Route 702 E Roy, Washington 98580-8848
Grantee/ Holder:	Kitsap Public Health District 345 6 th Street, Suite 300 Bremerton, Washington 98337
Legal Description:	Located in Port Orchard, Kitsap County, Washington. Full legal description provided as Exhibit A and depicted in Exhibit B.
Tax Parcel Nos.:	012301-4-022-1005

ENVIRONMENTAL (RESTRICTIVE) COVENANT

I. Purpose and Background

Grantor, ST Trust, hereby binds Grantor and its successors and assigns to the covenants, conditions and restrictions identified herein and grants such other rights under this Environmental (Restrictive) Covenant (hereafter “Environmental Covenant”) made this ____ day of _____, 2016.

This instrument grants a valid and enforceable Environmental Covenant pursuant to the Washington State Uniform Environmental Covenants Act (“UECA”), Revised Code of Washington (“RCW”) Chapter 64.70, to the Kitsap Public Health District and its successors and assigns (“Kitsap” or “Holder”). Notwithstanding RCW 64.70.030, it is expressly agreed that the right of Kitsap as a holder is not an ownership interest under the Model Toxics Control Act (“MTCA”), Chapter 70.105D RCW, or the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) 42 U.S.C. § 9601 *et seq.*, or any other statute, regulation or ordinance that would impose obligations or restrictions due to ownership interest.

The covenants, conditions and restrictions granted herein are requirements of an Administrative Order on Consent (“AOC”) entered into between ST Trust and the United States of America, on behalf of the United States Environmental Protection Agency (“EPA”) and the Department of the Navy, EPA Docket No. 2016-10-0041, in the matter of a Non-Time-Critical Removal Action for the Gorst Creek Landfill Site (“Site”). The AOC concerns the implementation and settlement of claims for the environmental response action selected in the Gorst Creek Action Memorandum dated _____, 2016 (“Action Memorandum”).

Between about 1968 and 1989, the Site was operated as a landfill with waste disposed in Gorst Creek Ravine on top of a 24-inch steel culvert through which Gorst Creek was channeled.

The landfill, encompassing about 5.7 acres, is approximately 700 feet long, reaches depths of approximately 60 to 80 feet, and was estimated to contain 150,000 cubic yards of waste when it ceased operation. Site assessment and investigation identified that the waste contains and is a source of hazardous substances. Sampling data from the surface of the landfill and in soil and sediment downstream of the landfill identified the presence of “hazardous substances,” as that term is defined under CERCLA section 101(14), 42 U.S.C. § 9601(14). The weight of the landfill crushed the 24-inch steel culvert, impeding the flow of Gorst Creek causing localized flooding and resulting in the release and erosion of additional waste material, including hazardous substances, from the landfill to the surrounding environment. The Action Memorandum selected a response action to remove all waste from the landfill to protect public health and the environment from the release and/or threatened release of hazardous substances at and from the Site and to restore the creek ravine.

The removal action set forth in the Action Memorandum is an “environmental response project” within the meaning of UECA. The purpose of this covenant is to implement post-removal site controls that will conserve Gorst Creek in its restored state after completion of the removal action by prohibiting all future development of the Site.

The property that is the subject of this Environmental Covenant is legally described in Exhibit A, and illustrated in Exhibit B, both of which are attached (“Property”). If there are differences between these two Exhibits, the legal description in Exhibit A shall prevail.

II. Administrative Record

A copy of the administrative record supporting the removal action for the Site is on file with EPA or its successor agency and is available for public review. In order to make arrangements for

such review, a person may contact the EPA Region 10 Superfund Records Center by calling telephone number (206) 553-4494. The EPA Region 10 office is located at 1200 Sixth Avenue, Seattle, Washington.

III. Conveyance and Covenant

This instrument is an Environmental Covenant executed pursuant to UECA, concerning the Property owned by Grantor. Grantor covenants to and with the Holder, and its successor and assigns, that Grantor is lawfully seized in fee simple of the Property, that the Grantor has good and lawful right and power to sell and convey the Property or any interest therein, that the Property is free and clear of encumbrances, except those reviewed and acknowledged by EPA Region 10 in an ownership guarantee dated _____, 2016, and that Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

With this Environmental Covenant Grantor hereby binds Grantor, its successors, and assigns, to the covenants, conditions and restrictions set forth herein, and conveys to the Holder such restricted property interests. The Washington State Department of Ecology (“Ecology”) and EPA shall have the full rights to enforce the covenants, conditions, restrictions or other rights set forth herein as provided by law including but not limited to CERCLA, MTCA and UECA.

Grantor makes the following covenants as to limitations, restrictions and uses of the Property and specifies that such covenants, conditions and restrictions shall run with the land, as provided by law, shall inure to the benefit of the parties hereto, and shall be binding on all parties and all persons claiming under them, including all current and future owners of any portion of, or interest in, the Property (hereinafter “Owner”):

The primary purpose of this Environmental Covenant is to conserve the Property in its restored state after completion of the response action. As such, the following covenants, conditions and restrictions shall apply:

1. All development of the Property is prohibited, including but not limited to the construction of buildings or other structures or the extraction of any natural resources for profit.

2. Owner shall prohibit any uses of the Property or activities on the Property that may interfere with the completed response action, operation and maintenance, monitoring or other measures that may be necessary to conserve the Property in its restored state after completion of the response action.

3. Should Owner become aware of any violation of this Environmental Covenant, Owner shall promptly report such violation to Kitsap and EPA Region 10:

Jeffrey Rodin
Federal On-Scene Coordinator
U.S. EPA Region 10
Emergency Response Unit
1200 Sixth Ave. Suite 900
Seattle WA 98101
206-553-6709
rodin.jeffrey@epa.gov

Keith Grellner R.S.
Environmental Health Director
Kitsap Public Health District
345 6th Street, Suite 300
Bremerton Washington 98337
360-337-5284
keith.grellner@kitsappublichealth.org

4. No conveyance of title, easement, lease or other interest in the Property shall be consummated by Owner without adequate and complete provision for continued adherence to this Environmental Covenant.

5. Owner must provide sixty (60) days advance written notice to Kitsap and EPA Region 10 of Owner's intent to convey or transfer any interest in the Property, including the name and address of the transferee and the date on which the transferee was notified of the AOC and the Environmental Covenant.

6. Owner shall allow authorized representatives of Kitsap and EPA the right to enter the Property, at their own risk, at reasonable times to evaluate the condition of the Property, to determine compliance with this Environmental Covenant and to inspect any aspect of the removal action conducted at the Property including, but not limited to: (1) Verifying any data or information submitted to the United States; (2) Conducting investigations regarding contamination at or near the Property; (3) Obtaining samples; (4) Assessing the need for, planning, implementing, or monitoring response actions; (5) Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by ST Trust or its agents; (6) Determining whether the Property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted; and (7) Implementing, monitoring, maintaining, reporting on, and enforcing any institutional controls or any land, water, or other resource use restrictions regarding the Property. When practicable, Kitsap or EPA will endeavor to provide Owner at least 48 hours notice prior to entering the Property. When Kitsap and EPA will both be entering the Property, either agency may provide this notice on behalf of both agencies.

IV. Reservation of Rights

Grantor hereby reserves unto itself, its representatives, heirs, assigns and successors all rights accruing from ownership of the Property that are not conditioned, restricted or prohibited by this Environmental Covenant.

V. Enforcement

Compliance with this Environmental Covenant may be enforced pursuant to all applicable laws, including but not limited to CERCLA, UECA, and MTCA. Kitsap, EPA and Ecology shall have full enforcement rights. An action for equitable or injunctive relief for violation of this Environmental Covenant may also be maintained by the other persons and entities set forth in RCW 64.70.110. Failure by any party or person to enforce compliance with this Environmental Covenant in a timely manner shall not be deemed a waiver of the right to take subsequent enforcement actions.

VI. Recordation

Grantor shall record this instrument in the official records of Kitsap County, Washington and shall pay the costs associated with recording.

VII. General Provisions

Agency's Interest. Pursuant to RCW 64.70.030 the rights granted to EPA and Ecology by this Environmental Covenant are not interests in real property. As noted in Section I, *supra*, Kitsap's ownership interest is limited to the terms of this Environmental Covenant.

Liberal Construction. This Environmental Covenant shall be construed in favor of effectuating the purpose of this Environmental Covenant. If any provision is found to be ambiguous, an interpretation consistent with the purposes of this Environmental Covenant that would render the provision valid shall be favored over any interpretation that would render it invalid.

Severability. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

Costs. Owner, upon request by Kitsap, shall be obligated to pay for Kitsap's costs to process a request for any modification or termination of this Environmental Covenant.

VIII. Termination and Modification

1. This Environmental Covenant may only be amended or terminated with the prior approval of EPA and in accordance with the procedures and process contained in the amendment and termination provisions of UECA, RCW 64.70.090 and 64.70.100. If EPA determines that it is necessary to amend the Environmental Covenant to carry out and maintain the effectiveness of the response action, EPA may request that Kitsap and any other necessary parties amend the Environmental Covenant. Kitsap reserves the right to request amendments to the Environmental Covenant in the event that Kitsap lacks the funds or resources to carry out any responsibilities under the Covenant.

2. By signing this agreement, per RCW 64.70.100, ST Trust agrees to waive all rights to sign amendments to and termination of this Environmental Covenant.

IX. Signature and Acknowledgements

Grantor covenants that it is authorized to grant this Environmental Covenant and shall warrant and defend the same against all claims and demands challenging such authority. The undersigned parties each represent and certify that they are authorized to execute this Environmental Covenant.

IN WITNESS WHEREOF, ST Trust has executed this Environmental Covenant on this _____ day of _____, 2016.

Signatory's printed name _____

Signature _____

William J. Nilles Jr., Trustee
For ST Trust, Grantor

STATE OF WASHINGTON)
County of _____)

On this _____ day of _____, 2016, before me personally appeared _____, to me known to be the Trustee of ST TRUST, that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of the trust, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for the State of Washington,
residing at _____
My Appointment expires _____

The forgoing Environmental Covenant is hereby approved and certified.

By: _____
Sheila Fleming, Acting Director
Office of Environmental Cleanup
U.S. Environmental Protection Agency Region 10

By: _____
Kitsap Public Health District